91-1461

Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1991

RICK MARTIN,
PETITIONER,

V,

STATE OF ALABAMA,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

FOR REVIEW

1. Whether Petitioner's rights to due process of law under the Fourteenth Amendment of the United States Constitution have been abridged by a holding of a Alabama State Court that there exists sufficient evidence to convict the Petitioner of Capital Murder when all of the testimony and evidence against the Petitioner in the case comes from either an alleged unindicted accomplice or a co-defendant in trial, when there exists a state law which provides that a conviction of felony cannot be had on the testimony of an accomplice unless corroborated by other evidence. The issue of whether the unindicted witness was an accomplice having been submitted to the jury, when there has been an instruction by the trial judge for the jury to apply incriminating heresay testimony, alleged to have been said by the Co-defendant about

acts by the Petitioner, to the co-defendant but not to the Petitioner; following a refusal for a request for a severance of the trial of the Petitioner and Co-defendant.

2. Whether Petitioner's rights to due process of law under the Fourteenth Amendment of the United States Constitution have been abridged by a holding of a Alabama State Court that the jury had sufficient evidence to find intent on behalf of the Petitioner to commit Capital Murder when there has been an instruction by the trial judge for the jury to apply incriminating heresay testimony, alleged to have been said by the Co-defendant about acts by the Petitioner, to the co-defendant but not to the Petitioner; following a refusal for a request for a severance of the trial of the Petitioner and Co-defendant; when that instruction to the jury would leave the Petitioner's presence as the only evidence of his intent to aid and abet in the crime of Capital Murder.

PARTIES

The Caption contains the names of all the parties in the court below.

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OPINIONS BELOW

1. The opinion of the Alabama Court of Criminal Appeals affirming the Petitioners conviction has not yet been reported. A copy of this opinion is reproduced as Appendix A to this petition.

STATEMENT OF JURISDICTION

Petitioner seeks review of a final decision of the Alabama Supreme Court denying Petitioner's application for certiorari rendered on November 22, 1991. This was preceded by an application for rehearing to the Alabama Court of Criminal Appeals filed on May 10, 1991 and overruled on June 14, 1991. Said Application for rehearing followed the opinion rendered on April 26, 1991 by the Alabama Court of Criminal Appeals affirming the conviction of the Petitioner for Capital Murder. The Petitioner has filed this petition within the required 90 days of the final action by the Alabama Supreme Court which is the highest court in the State of Alabama. This Court has jurisdiction under 28 U.S.C. Section 1257.

Where Petitioner has exerted timely a claim that he has been denied his right to a fair trial in a State Court by due process of law as guaranteed to him under the Fourteenth amendment, and where the

highest Court of the State has failed to exercise its right to review the opinion of a lower court, when there exists both Federal and State cases which prohibit the acts of the trial court; then the Supreme Court has the right to grant Certiorari to review the actions of the State Courts to assure that no citizen will be deprived of his liberty without due process of law as guaranteed by the United State Constitution in Amendment Fourteen.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment Fourteen:

Section 1 Citizens of the United States.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The Defendants, William Chris Hagood and Ricky Martin, were indicted for capital murder committed during the course of a robbery. They were found guilty of capital murder as charged in the indictment and were sentenced to life in prison without the possibility of parole. The state's evidence tended to show that on August 28, 1988, the body of James Lindsey was found on a county road between Decatur and Hartselle, Alabama. The victim had been stabbed three times-- once in the back and twice in The chest. Death was caused by a combination of loss of blood and breathing blood into the lungs. The evidence showed that several weeks earlier, the victim had obtained marijuana from Anthony Simmons. Simmons had known Lindsey for several years but had never previously sold him marijuana. Simmons testified at trial that Lindsey did not pay him for the marijuana he had sold him several weeks

prior to his death. He further stated that he had obtained this marijuana from Hagood. Simmons made several attempts to get the money from Lindsey but was unsuccessful. On the day he was killed, Lindsey had called Simmons to ask if Simmons could get him some more marijuana. Simmons stated that he might be able to, and he asked him if he had the money that he owed him for the marijuana he had sold him previously. Lindsey stated that he would try to get the money.

At approximately 5:00 p.m. on August 28, 1988, Simmons went to Hagood and talked with him about obtaining more marijuana for Lindsey. Ricky Martin, Hagood's brother-in-law, was with Hagood when this discussion took place. Hagood then asked Simmons about paying for the marijuana he had given him previously. Simmons offered to borrow the money, but the Defendants said they would get the money out of Lindsey if they had to "whip his ass." They agreed that same evening to talk about

the "deal." After Simmons left the Defendants, he called Lindsey and told him that he could probably get the marijuana he wanted and that Lindsey should call him back at about 7:00 P.M. that evening.The Defendants arrived at Simmons's house at around 7:00 p.m. that same day. Several people were at Simmons's house when the Defendants arrived, so they went outside to talk about the deal. They told Simmons that they had the marijuana. Simmons called Lindsey and told him to meet them behind the Jet Mart convenience store on Highway 31 between Decatur and Hartselle. The three left Simmons's home, Simmons driving his own car and the Defendants following in another vehicle. They arrived at the meeting place and parked their cars. The Defendants parked on a gravel road behind theJet Mart convenience store.Simmons then left in his car to get Lindsey In the meantime, Lindsey had gone to visit a friend, Elbert Clements, to see if he could get the money for the marijuana. Michael Short and Renea Dalton were present when Lindsey arrived at Clement's home. Clememts agreed to lend Lindsey $500.00 if Lindsey would pay him $100.00 in interest and if he was paid by the next day. Lindsey agreed to these terms.

Having obtained the money, Lindsey and Clements, who wished to protect his investment, drove to the designated area and waited in front of the Jet Mart. Simmons arrived and took Lindsey to where he had left the appellants. The Defendants asked Simmons whether the victim had the money he owed. Simmons replied that he did. The Defendants told Simmons that the marijuana was in the trunk of the car. They opened the trunk, and Hagood began fumbling for something in the trunk. He told them that could not find the marijuana. Martin then got inside the car and said that he could not find it in the car either. Simmons walked back to his car to get a cigarette. He heard Lindsey say, "Oh, shit." When he went over to the car that the appellants were driving, he saw the victim lying face up on the ground, making gurgling noises.

TheDefendants then asked Simmons where the money was. Simmons got the money from the victim and gave it to Martin. Martin handed the money to Hagood. The Defendants asked Simmons to help them drag the body away from the car, but he refused. Hagood gave Simmons $150.00 and told him to keep his mouth shut. Simmons, fearing for his

life, took the money and went home. He told his wife what had happened.

Meanwhile, Clements was waiting for Lindsey to return to his car. When Lindsey didn't return, Clements called Michael Short, who had been with them earlier in the evening. When Short arrived, he looked for Lindsey, but could not find him. Short then left and started to drive home down a gravel road when he saw a body. It was Lindsey. Short went back to the Jet Mart parking lot where Clements had stayed and they both called the police.

Hagood testified at trial that he went with Simmons and Martin to the area behind the Jet Mart. He said that Martin worked on his car after Simmons left to get Lindsey. This was at approximately 8:30 p.m.. When Simmons returned with Lindsey, Simmons and Lindsey approached Martin's car. He testified that Martin and Lindsey started arguing and that Lindsey attacked Hagood with a piece of pipe. Hagood stated that he pulled out a pocket-knife and accidentally, in self-defense, stabbed Lindsey in the back and then twice in the chest. There were several inconsistencies in his testimony.

Hagood was arrested the day after the incident. In his possession were two $100 bills and three $20 bills. Martin was not located for two months. Martin was finally found, through an anonymous tip, in a trailer in Virginia Beach, Virginia. After the police entered the trailer by using a battering ram, appellant Martin said, "Who the hell told you I was here?" 1

1. Restated from opinion of Court of Appeals

REASONS FOR GRANTING THE WRIT

The Fourteenth amendment of the United States Constitution guarantees every United States Citizen a fair trial in a criminal prosecution in a State Court; however in this case Petitioner has been convicted of Capital Murder without the benfit of sufficient evidence due to an error on behalf of the trial judge in refusing to grant a severance on motion of Petitioner's attorney when it became apparent that a witness had surprised Petitioner's attorney with damaging testimony which would have been heresay as to Petitioner. The jury instead instructed the jury as follows: Record page 700-701

"THE COURT Let me give you these instructions before I let it slip my mind. Let me instruct you on some testimony that you just heard from Mr. Wiggins, and I'm not going to attempt to quote his testimony to you, I am going to just verbalize it because ya'll heard the testimony, you remember what it was and go by what you remember. Testimony concerning Mr. Martin's stabbing of the victim, whatever that testimony was. You may not use that testimony when you are considering the case of the state versus Martin. That would be classified as hearsay testimony as to Mr. Martin. You may not--that's excluded from your consideration when you consider the case of Mr.. Martin during your deliberations because it is hearsay. Mr. Martin was not present when it was stated, which makes it hearsay and it cannot be used against him. Do all of you understand what evidence and testimony I am talking about? Anybody that does not, if you will raise your hand. Is there any of you that cannot consider this case against Mr. Martin without considering that test-

-imony we are talking about?"

In Barton v United States,263 F. 2d 894 under almost identical facts ruled that:

"Considering the substance and terms of Barton's statements, we doubt whether it was at all possible to carry out that instruction. To do so certainly would require twelve minds more perfectly disciplined than those of the average human jurors.

Unless that admonition was effective, then Mitchell has been deprived of his constitutional right to be confronted with the witnesses against him, for he has been afforded no opportunity to cross-examine Barton as to the truthfulness of his many accusatory statements."

[ONE]

Following this error by the court the reliance on the rulings of the jury to determine the sufficiency of the evidence became an impossible challenge.

The jury was asked thereafter to determine whether Simmon was an accomplice. When you consider Herring v. State, 540 So. 2d 795, which states that riding to the scene of a killing even without further acts made one an accomplice; it is hard to imagine how Simmons would not be considered to be an accomplice. Therefore when the jury ruled that

Simmons was not an accomplice, it seems likely that they were being influenced by the previously tainted testimony.

If so under Section 12-21-222, Code of Alabama (1975) which states:

> a conviction of a felony cannot be had on the testiony of an accomplice unless corroborated by other evidence tending to connect the appellant with the commission of the offense, and such corroborative evidence, if it merely shows the commission of the offense or the circumstances thereof, is not sufficient.

With this statute in mind there is no testimony at all to be considered against the Petitioner so where could the jury have found sufficiency unless they considered the tainted testimony.

According to McElroy ALABAMA EVIDENCE, section 300.01 (7). The common test for determining whether there is sufficient corroboration of the testimony of accomplice is by eliminating evidence of the accomplice and then examining the remain-

ing evidence tending to connect appellant with the commission of the offense. SEE APPENDIX C FOR MOTION OF ACQUITTAL

[TWO]

The Sufficiency of Petitioner's intent to commit Capital Murder was found by the jury also, but consider Lewis v. State, 456, So. 2d 413, wherein the court stated the principal that if the Defendant was an accomplice to the felon only, but , not to the killing; then he could not be convicted of capital murder. Considering the facts that were supposed to be considered by the Jury, it is obvious that the tainted testimony is being considered for without it, the jury could not have reached a verdict of Capital Murder. SEE APPENDIX B FOR ACQUITTAL MOTION

CONCLUSION

The ends of justice require that certiorari be granted to this petitioner; for to do less would but to make a mockery of justice.